



Maine Education Association

Grace Leavitt President | Jesse Hargrove Vice President | Beth French Treasurer
Rebecca Cole NEA Director | Rachelle Bristol Executive Director

Testimony

In Opposition

LD 1562: An Act to Protect the Retirement of State Employees and Teachers by Establishing Standards for Fiduciary Responsibility

John Kosinski, Government Relations Director, Maine Education Association

Before the Labor and Housing Committee

April 20, 2023

Senator Tipping, Representative Roeder and esteemed members of the Labor and Housing Committee, My name is John Kosinski (he/him) and I am proud to serve as the Director of Government Relations for the Maine Education Association (MEA). The MEA represents 24,000 educators in the state of Maine, including teachers and other professionals in nearly every public school in the state and faculty and other professional staff in the University of Maine and Community College Systems.

I am here to testify on behalf of the MEA in opposition to LD 1562, *An Act to Protect the Retirement of State Employees and Teachers by Establishing Standards for Fiduciary Responsibility*.

We appreciate the desire to make sure we are maximizing the investments in the MainePERS system. As you have already heard, public employee pension benefits have fallen behind due to previous pension cuts, inflation and other factors, and efforts to improve benefits are costly due to Maine's unique constitutional constraints. We rely on MainePERS investments to pay benefits and to minimize fluctuations in the payment obligations for the state and school districts for current employees.

But LD 1562 appears to be a template bill designed to interfere with current MainePERS policies. This bill is similar to ALEC's "State Government Employee Retirement Protection Act." If you are not aware, ALEC is the American Legislative Exchange Council and is known as a national organization with a conservative outlook and provides template legislation for state legislators and pushes these bills in several states.

We are concerned this proposal may run contrary to the protections on MainePERS funding in the Maine State Constitution:

Section 18. Limitation on use of funds of Maine State Retirement System. All of the assets, and proceeds or income therefrom, of the Maine State Retirement System or any successor system and all contributions and payments made to the system to provide for retirement and related benefits **shall be held, invested or disbursed as in trust for the exclusive purpose of providing for such benefits and shall not be encumbered for, or diverted to, other purposes.** Funds appropriated by the Legislature for the Maine State Retirement System are

35 Community Drive, Augusta, ME 04330 | 1349 Broadway, Bangor, ME 04401
7 Hatch Drive, Suite 220, Caribou, ME 04736 | 29 Christopher Toppi Drive, South Portland ME 04106

207-622-5866 | 207-888-2070 fax | www.maineaa.org



Maine Education Association

Grace Leavitt President | Jesse Hargrove Vice President | Beth French Treasurer
Rebecca Cole NEA Director | Rachelle Bristol Executive Director

assets of the system and **may not be diverted or deappropriated by any subsequent action.**
(emphasis added)

LD 1562 proposes to limit the ability of MainePERS to consider certain factors when evaluating investments and one can argue this is attempting to encumber and divert their investment decisions. Climate risks, labor strife and political turmoil all can have an impact on investment performance, but LD 1562 attempts to limit the ability for MainePERS to consider these factors when investing. This bill takes aim at so-called “ESG polices” – a new buzzword.

We have a concern about restricting the investment protocols currently being used by MainePERS. If it ain't broke, don't fix it. MainePERS has consistently demonstrated financial acumen in their investments and we defer to their expertise on investment issues. Given their commitment to maximizing risk-adjusted investment returns, we caution against any effort to tie their hands as they try to keep rates stable and keep the plan healthy and sound.

Furthermore, David Webber at Boston University School of Law has a paper on how the ALEC template legislation creates a legal quagmire for trustees by, among other things, creating an unworkable distinction between ‘pecuniary’ and ‘non-pecuniary’ factors:

<https://corpgov.law.harvard.edu/2023/02/27/the-liability-trap-why-the-alec-anti-esg-bills-create-a-legal-quagmire-for-fiduciaries-connected-with-public-pensions/>

For these reasons, we oppose LD 1562. Thank you for your time and your service to the people of Maine. I will do my best to answer any questions you may have.